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**VIA EFILING AND HAND DELIVERY**

The Honorable Joseph J. Farnan, Jr.  
USDC for the District of Delaware  
844 King Street  
Wilmington, DE 19801

**Re: *Affymetrix, Inc. v. Illumina, Inc.*, D. Del., C.A. No. 04-901-JJF**

Your Honor:

I write to briefly respond to Affymetrix's September 21, 2007 letter that seeks to delay the briefing schedule of Illumina's Motion to Vacate as a Matter of Law the Jury's Verdict of Infringement of the '716 Patent Under the Doctrine of Equivalents on the Basis of Prosecution History Estoppel. Affymetrix suggests that this motion should be addressed with the post-trial motions, *i.e.*, after judgment has been entered on all phases. Illumina disagrees. Illumina respectfully submits that there are important reasons to deal with the instant motion now.

Specifically, unlike a motion for a new phase one trial, Illumina's instant motion presents a legal issue that is considered by a court based on its own review of the record evidence. Indeed, the Court specifically excluded the prosecution history estoppel issue from the phase one trial, with the understanding that this issue would be dealt with at a later time. *See, e.g.* Trial Tr. at 1209. This motion is thus not subject to the parties' stipulation regarding the post-trial motions, and Illumina respectfully suggests that the Court address Illumina's motion and the prosecution history estoppel issue now, and most certainly before the second phase of the trial.

As for the brief mention in Affymetrix's letter of its assignor estoppel motion (requesting the Court to rule in Affymetrix's favor), Illumina would like to point out that Affymetrix's assignor estoppel motion has not yet been briefed. Accordingly, it is not presently ready to be considered by the Court. In any event, as previously noted by Illumina, the Court's prior rulings on the related issue of Affymetrix's ownership of the '716 patent now precludes any finding of assignor estoppel in Affymetrix's favor.

Respectfully,



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